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Anthem, Hoping to Salvage Acquisition of WellPoint, Vows to Sue Garamendi

The health insurer plans to ask a court to undo the regulator's decision to block part of the deal.

By Lisa Girion
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Anthem Inc. said Tuesday that it would sue California Insurance Commissioner John Garamendi within days, seeking to overturn his decision to block part of its planned \$17-billion acquisition of WellPoint Health Networks Inc. of Thousand Oaks.

"We simply believe very strongly that we've met all the statutory requirements and that Garamendi has really abused his discretion," Anthem Chief Executive Larry Glasscock told Wall Street analysts after the company reported second-quarter results. "We're going to file this lawsuit in California just as quickly as we can."

The Indianapolis-based insurer will seek an expedited review of its suit, to be filed in state court, Glasscock added.

But several California lawyers who represent insurance and healthcare companies said such a case could take years to move through trial and appellate courts. Three months would be "incredibly fast," said Richard Giller, chairman of law firm Weston Benshoof's insurance practice group in Los Angeles.

Garamendi on Friday rejected the proposed sale to Anthem of WellPoint's Blue Cross Life & Health subsidiary, saying it would be "lousy" for consumers.

The lone regulator opposing the Anthem-WellPoint deal, Garamendi said he was eager to face Anthem in court.

"This is a lawsuit I want to have," he said. "Bottom line, the WellPoint-Anthem merger means higher premiums and lower benefits for policyholders."

The Blue Cross subsidiary represents about 4% of the total Anthem-WellPoint deal, but Garamendi's decision threw the whole sale into doubt.

Shares of both companies fell Tuesday on merger concerns and on worries about the industry's rising medical costs and pricing pressures, analysts said. Anthem fell \$6.38 to \$81.78 and WellPoint dropped \$6.18 to \$99.03. Both trade on the New York Stock Exchange.

Glasscock said Anthem remained committed to completing the deal, which would create the nation's largest health insurer, with more than 27 million customers. He said Anthem was

considering several options beyond the Garamendi suit but declined to describe them.

Calling Blue Cross Life & Health a profit center, Glasscock indicated that the company had no intention of agreeing to sell the WellPoint subsidiary to win Garamendi's endorsement.

According to Garamendi, state law empowers him to reject any deal he believes would be unfair, unreasonable or prejudicial to policyholders. He concluded that policyholders' premiums would be used to help finance the \$3.4 billion that Anthem needs to complete the purchase.

Garamendi reiterated Tuesday his objection to Anthem's plan to send to the corporate parent about \$1.2 billion from California's insurance operations over three years, and an unlimited amount after that. He also criticized severance and retention payments of up to \$600 million that the deal would give to WellPoint executives.

"I want them to explain to a judge why this is reasonable and fair and not prejudicial to policyholders," Garamendi said. "I'd love to have them explain why the executive salaries are in the interest of policyholders."

Some analysts believe negotiations will resume behind the scenes between Anthem and Garamendi. And Garamendi said he would reconsider if the two companies agreed in writing to conditions that would satisfy his objections.

"What Mr. Glasscock said before ... was that Californians would not pay for the merger," Garamendi said.

"And I said, 'Show me in writing a contract that says that.' He didn't."

WellPoint spokesman Ken Ferber said the companies believed that the written proposals already submitted to Garamendi adequately addressed his concerns. As for further negotiations, Ferber said, "The commissioner made it very clear to us that it was a final decision."

Regulators in nine states and Puerto Rico have approved the Anthem-WellPoint deal.

Friday, shortly before Garamendi's decision was announced, California's Department of Managed Health Care approved the sale.

The department oversees health maintenance organizations, including Blue Cross of California, a subsidiary that accounts for about 90% of WellPoint's business in the state.

Anthem and WellPoint both reported second-quarter results Tuesday.

WellPoint said its net income rose 34% to \$299.9 million, or \$1.86 a share, compared with \$224.5 million, or \$1.49, a year earlier. Revenue rose 17% to \$5.8 billion from \$4.9 billion.

Anthem's net income also rose 34% to \$237.9 million, or \$1.66 a share, compared with \$177.3 million, or \$1.25, a year earlier. Revenue climbed 12% to \$4.5 billion from \$4.1 billion.